Laura M. Nichols Executive Director

CAMBRIDGE CONSUMERS' COUNCIL

Corey R. Pilz Consumer Information Specialist 831 Massachusetts Avenue Cambridge, Massachusetts 02139



Working in Cooperation with the Office of Attorney General Martha Coakley

February 21, 2013

Charles H. Carroll, Deputy Director Commonwealth of Massachusetts Division of Standards One Ashburton Place, Room 1115 Boston, MA 02108 Via U.S. Postal Mail and Email Charles.Carroll@state.ma.us

RE: Comments Regarding Emergency Regulations 202 CMR 7.00: Price Disclosure

Dear Deputy Director Carroll:

The Cambridge Consumers' Council ("CCC")¹ hereby submits comments in response to the Notice of Public Hearing issued by the Division of Standards ("DS" or the "Division") concerning the emergency price disclosure regulations promulgated by the Division. Prior to offering comments, the CCC wishes to applaud the Division for its efforts in clarifying the new law that dramatically changes the way consumers shop for food items and groceries alike.

Price disclosure has always been seen as a fundamental way for consumers to exercise their rights within the marketplace, whether purchasing an automobile or a box of cereal. The CCC welcomes the additional consumer protection measures the Division has proposed in its regulations to ensure an adequate level of disclosure remains, including the Division's interpretation of the requirement of consumer price scanners capable of printing an individual item pricing tag, daily inspection of consumer price scanners and the lowest price guarantee when a discrepancy arises among the price of a grocery item.

With that said, the CCC believes additional clarifications of the new law must be made to ensure consumer clout is not severely weakened in the grocery retail industry. The CCC is also cognizant that overregulation can negatively impact a consumer, especially in a retail setting. Thus, we offer the following for your consideration:

The Implementation of a Consumer Price Scanner System and Granting of a Waiver by the Division

1. On-site inspection procedures prior to granting a waiver.

The CCC recognizes the DS will not grant a waiver allowing a seller to convert from an individual item pricing system to a consumer price scanner system until the food store or food department has met all the requirements established under 220 CMR 7.04; however, no actual inspection of the premises is required to confirm compliance with the regulations in their entirety. We recognize the burden that would be placed on

Telephone (617) 349-6150

Facsimile (617) 349-6148

TTY/TTD (617) 349-6112

The Cambridge Consumers' Council, a City of Cambridge agency, provides resources, support and influence on consumer matters affecting the citizenry. The Council serves as a local consumer program that works in cooperation with the Office of the Attorney General to mediate individual/business complaints in an attempt to avoid legal action by either party. This correspondence solely represents the views of the agency.

the Division, and its agents, should it be required to inspect every seller prior to granting a waiver. Still, as this is a new system being implemented throughout the Commonwealth, the CCC believes the Division should create a procedure to confirm that a seller applying for a waiver properly meets *all* standards established under these regulations, not just the requirements for the waiver application itself. This includes checking to see that installed consumer price scanners meet the Division's specifications and are properly functioning; all required consumer price scanner and consumer rights disclosures are properly posted; and stores have implemented procedures to comply with additional recordkeeping requirements.

The CCC proposes the Division implement a system where on-site inspections for compliance are conducted prior to approving a waiver application. We suggest the Division choose to inspect a seller based upon the number of waiver applications submitted. For example, if a seller submits three (3) waiver applications, the Division may wish to inspect one of the seller's locations to ensure a general understanding of compliance with the requirements for the consumer price scanner system. We also urge the Division to take as much time as needed to evaluate a waiver application, as we believe it is important for consumers to know that all requirements have been met by a seller prior to switching to the new pricing system. The CCC appreciates the Division's active enforcement in terms of ensuring individual item pricing continues by an applicant until a waiver has been officially granted.

2. Division transparency when granting a waiver.

The CCC encourages the Division to develop an accessible, online database detailing information about each seller that has been granted a waiver. The Division may wish to include information such as: the seller's physical address, seller's primary store contact telephone number and the store's manager; the number and nature of any violations that may have been issued to the store by the Division or its inspectors; and the amount of fines issued in conjunction with each violation, including any outstanding amount still owed.

Since dual pricing systems will be allowed under the new law, this information should be provided to consumers as a way to help them better evaluate whether or not they wish to shop at a particular seller.

Consumer Price Scanners

1. "Retail grocery item sales space" as a method of calculation.

The CCC cautions the Division on its interpretation of retail space when calculating both the number and type of aisle scanners required by a food store or food department applying for a waiver. The CCC believes the new law does not require a specific differentiation of "grocery items" and "non-grocery items," yet the Division has chosen to adopt "retail grocery item sale space" as its method for calculating the needs for a compliant consumer price scanner system.

Such a method will not only make it difficult for both the seller and the Division to accurately calculate a total "retail grocery item sales space" given the intermingling of items throughout a typical store, but it will place an undue burden on consumers shopping in these stores. Many sellers applying for waivers carry items that do not fall within the definition of "grocery item" like health and beauty aids, household goods and stationery items—items that were not exempt under the previous food store item pricing law. However, the new law does allow sellers to exempt all items it sells from individual pricing, grocery or not. As consumers will now be stuck without a sticker, we believe it is only fair to provide them with the maximum number of scanners allowable under the new law.

2. The number of printing consumer price scanners.

The CCC supports the Division's interpretation of the requirement of consumer price scanners capable of printing an individual item pricing tag, and encourages the Division to continue to expand the required installation of these scanners in a manner tied directly to the retail space of a food store or food department. It is important to note that grocery shopping is not like other retail shopping—grocery shoppers typically purchase a greater number of items at a time. As comparison shopping and tallying the total of a purchase becomes complicated under the new law for a consumer, it is important to provide a viable substitute to allow consumers to perform these functions. More of these types of price scanners will allow for an uncumbersome grocery shopping experience for consumers.

Implementation of New Technologies

1. Establishment of standards for new technologies.

The CCC supports the Division encouraging innovation in the marketplace by allowing a food store or food department to deploy new technologies that perform similar functions as those performed by a consumer price scanner.² For both the benefit of the industry and the consumer, the CCC encourages the Division to establish basic criteria for evaluating a new technology to help determine if it will serve as a practical substitute for the current price scanner.

In doing so, we urge the Division to not only consider whether or not a new technology will perform the same function as a price scanner, but also its accuracy in doing so and the manner in which the device will be utilized in the store. We especially encourage the Division to take into account some of our most vulnerable consumers—senior citizens, persons with disabilities, and non-English speakers—when considering the usability of such technologies. Therefore when evaluating a new technology, the CCC believes the Division should require a seller to present statistics concerning the use and accuracy of the device as well as market research data about the extent of the device's usage and acceptance in the industry.

2. Require consumer input prior to approval of use.

While the Division considers a request for the allowance to use a new technology, the CCC believes it is important to consider whether or not such technology is going to be embraced by Massachusetts shoppers. The CCC encourages the DS to develop a method for allowing direct feedback from Massachusetts consumers prior to granting any request. If Massachusetts consumers are not going to embrace a new technology, and consumer prices scanners are eliminated, we believe the legislative intent of providing consumers with a feasible substitute for item pricing will not be met. Furthermore, shopping will become more difficult and time-consuming for the majority of shoppers.

Industry Concern regarding Unabbreviated Product Names

The CCC recognizes many industry stakeholders are concerned by the requirement to use unabbreviated product names on price labels. We sympathize with how burdensome this may be. Should the Division revisit this, we believe a standard should be created to prevent the use of cryptic product descriptions that would make it difficult for consumers to easily match a product to a price label, as this appears to be the

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See 202 CMR 7.04 (12).

legislative intent. Such a standard should be reasonable for both the consumer and the industry, but must be designed for the average shopper in order for it to be effective.

Conclusion

As price stickers begin to disappear from items, many consumer advocates are still concerned that the burden of pricing an item will shift from that of the retailer to the consumer. We ask the Division to continue to safeguard the consumer protections built into the emergency regulations, and consider the recommendations that we have put forth for the purpose of continuing to create an effective price disclosure system for consumers in the retail marketplace. Again, we thank you for this opportunity to comment. We look forward to working with the Division on important consumer matters in the future.

Respectfully Submitted,

Corey R. Pilz, Consumer Information Specialist

City of Cambridge Consumers' Council

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Barbara Anthony, Undersecretary Commonwealth of Massachusetts Office of Consumer Affairs and Business Regulation 10 Park Plaza, Suite 5170 Boston, MA 02116

Diane Lawton, General Counsel and Chief of Staff Commonwealth of Massachusetts Office of Consumer Affairs and Business Regulation 10 Park Plaza, Suite 5170 Boston, MA 02116